

40

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCHS  
AT HYDERABAD

OA.519/99

Dated 7.7.2000

Between

Dr. T.R.K. Reddy

: Applicant

And

1. Union of India, rep. by its  
Secretary, Min. of Railways  
Railway Board, Rail Bhavan  
New Delhi

2. General Manager  
SC Rly., Rail nilayam  
Secunderabad

3. Dr. K. Jagannadham  
Chief Medical Superintendent  
Railway Hospital, Hubli  
Karnataka State

4. Dr. P.V. Krishna Rao  
Chief Medical Superintendent  
South Eastern Railway Hospital  
Waltair

5. Dr. Munisingh  
Chief Medical Superintendent (retd)  
H.No.12-13-304. Street No.9  
Tarnaka, Secunderabad-17

: Respondents

Counsel for the applicant

: N. Ramamohan Rao  
Advocate

Counsel for the respondents 1 & 2

: N.R. Devaraj, SC for Rlys.

Coram

Hon. Mr. R. Rangarajan, Member (Admn)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)





OA.519/99

Dated : 7.7.2000

## Order

Oral order (per Hon. Mr. R. Rangarajan, Member (Admn))

Heard Mr. Siva for Mr. N. Rama Mohan Rao for the applicant and Mr. N. R. Devaraj, for the respondents.

2. The applicant in this OA earlier approached this Tribunal by filing OA.562/95, which was disposed of on 30.6.98. That OA was filed for the following reliefs:

To direct the respondents to produce records relating to the proposed empanelment to a SAG Cadre of Medical Service without the finalisation of the seniority of the applicants and the respondents 3 to 5 by declaring the proposed consideration of private respondents for the posts of SAG giving them the seniority against post graduate quota which is not provided in the rules as arbitrary, illegal, unconstitutional and violative of Articles 14 and 16 of the Constitution.

3. That OA was disposed of by the following order :

a) In view of what is stated above, the applicants, if so advised, may submit a detailed representation including the contentions raised in this OA.

b) The Member in charge of the Medical Department in the Railway Board, within a period of three months from the date of receipt of a copy of the representation shall dispose of such representations if received after personally scrutinizing the case.

c) The Railway Board shall then send a suitable reply to the applicants, through a speaking order within three months from the date of receipt of the representation.

4. In obedience to that direction the Railway Board has disposed of his representation by the impugned order dated 19.12.98 rejecting the case of the applicant for giving him seniority above that of Dr. K. Jagannadham, Dr. P.V. Krishna Rao, and Dr. Muni Singh, who are impleaded as Private respondents in this OA. It has to be noted that the three respondents are Post graduate degree holders.




5. Notices served on all the three private respondents and called absent.

6. This OA is filed to set aside the impugned letter No.E(O)III/CC/96/1 Dated 19.12.98 and for a consequential direction to the Respondent No.1 and 2 to treat the applicant as senior to private respondents 3 to 5 with effect from the date on which his immediate junior was so promoted to the aforementioned categories of DMO/Sr. Medical Officer and on that premises consider his case for further promotion in all higher categories such as Medical Superintendent, Senior Medical Superintendent and Senior Administrative Grade and above grades, with all consequential benefits.

7. The learned counsel for the applicant submitted that rejection of the case of the applicant for giving him seniority above that of the three private respondents is a gross violation of the Recruitment rules mentioned in the notification No.75.E(GR)I/7/72.E(GR)II dated 14.7.1980 (Annex.A.I).

8. The present case is in regard to seniority on promotion to the post of Divisional Medical Officer/ Senior Medical Officer as Non- Post graduate below that of Post graduate doctors promoted earlier to the promotion of the applicant. The relevant rules for the above said promotion reads as below :-

2.(ii) Against the post of Divisional Medical Officer/Senior Medical Officer

a) for the entry under column 10 the following entry shall be substituted, viz:-

"by promotion 75%  
by direct recruitment 25 per cent."

b) for the entry under column 11, the following entry shall be substituted, viz.: -  
"Promotion:

The promotion posts during a calendar year shall be filled in the following sequence:

a) 66-2/3 per cent from Assistant Divisional Medical Officers (Rs.700-1600) on the basis of common seniority including those possessing post-graduate qualification with 5 years service in the grade rendered after appointment thereto on a regular basis.

3

W

b) 33-1/3 per cent from remaining Assistant Divisional Medical Officers (Rs.700-1600) possessing Post-graduate qualification with 5 years service in the grade rendered after appointment thereto on a regular basis.

Note:

a) Those promoted under (a) above shall be senior to those promoted under (b) in a calendar year.

b) For the first 5 years from the date of promulgation of these rules, "service in the grade" will include service in Class II scale of Rs.650-1200 or equivalent."

9. The contention of the applicant is that the private respondents who were promoted against 33-1/3% quota of promotion against 75% of the vacancies for promotion on the ground that they are Post-graduates, they cannot get seniority above the applicant in view of note 'a' in the said rules, as the applicant is also promoted in the same calendar year within 66-2/3% quota under promotional quota vacancies due to up gradation proposals.

The applicant is promoted in the same calendar year when the private respondents 3 to 5 were promoted. In view of that even though the applicant was promoted later on the basis of up gradation in view of note 'a' referred above, the applicant should get seniority above those who were promoted against 33-1/3% against promotional vacancies promoted on the ground that they are Post graduate degree holders.

10. The respondents submit that the applicant was promoted against up graded post. In the up gradation post seniority cum fitness counts. Recruitment rules cannot apply to the up graded posts and hence the applicant was promoted later should rank junior to the private respondents and that is the sum and substance of the impugned order issued by the Railway Board.

11. We have perused the instructions given by the Railway Board in regard to the filling up of the up graded post, which only says that the Assistant Division Medical Officer should be promoted on the basis of seniority cum fitness against up graded post. It does not talk about following Recruitment rules in this connection. It is very clear that against up graded posts there is no direct recruitment. In view of the above non-following of the recruitment rules has to be considered.





12. The Railway Board had correctly indicated in the order for up gradation that there is no direct recruitment and up gradation was ordered not to fill up the vacancies that had arisen in due course due to eventualities like retirement, death etc. It has been issued to ensure that the Medical Officers are not stagnated as Asst. Divisional Medical Officers for long periods. If they are allowed to stagnate in that cadre that will not show much interest in discharging their duties. Further it is necessary that an officer appointed should get promotion in due course without stagnating in a cadre for many years. With that view only the orders for up gradation was issued. Because the reasons for issuing the up gradation order is to relieve stagnation, the Railway Board had correctly ordered that no Direct Recruitment is permitted in the posts to be filled up by up gradation. That it self shows that the Recruitment rule is not to be followed.

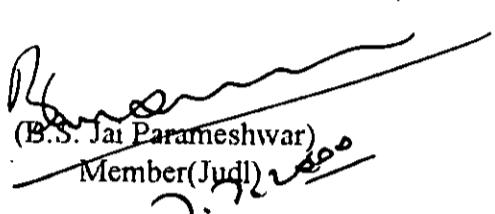
13. The only point is whether the full quota of promotion has to be done by following the Recruitment rules i.e. 66-2/3% of the posts to be filled up by Non-Post graduate degree holders and the rest 33-1/3% to be exclusively ear-marked for Post graduate holders. If such a bifurcation is done it is very likely that the junior officers who were possessing Post graduate degree will jump over those who did not possess Post graduate degree but only possesses degree, thereby defeating the purpose of up gradation. In that case the senior medical officer will lose promotion to the extent of 33-1/3% of the up graded posts and juniors will be promoted against that. That is not the intention for up gradation. Up gradation is meant to relieve stagnation of the Senior Medical officers serving in the Department. If that is the object then it has to be held that in the up gradation proposals the quota of 66-2/3% and 33-1/3% as per Recruitment rules cannot apply. In that case the Recruitment rules for promotion need not to be followed.

14. When the Recruitment rules itself is not to be followed in the up gradation promotions, it is not necessary that the Note 'a' should be followed in this connection. In that view of the matter the Medical Officers promoted against up gradation posts will rank juniors to those who are promoted earlier and their seniority will be in accordance with the date of joining in the up graded post or as per the panel position of the up graded Medical Officers.

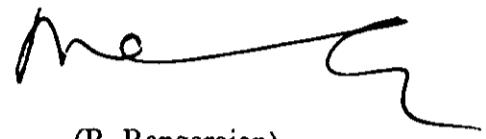


15. In view of what is stated above, we find no irregularity if the applicant is shown junior to the private respondents 3 to 5 who were promoted earlier to the applicant even in the same cadre on the basis of Recruitment rules against the normal vacancies that arose.

16. In view of what is stated, we find no merit in the OA. Hence the OA is dismissed. No costs.



(B.S. Jai Parameshwar)  
Member(Judl)



(R. Rangarajan)  
Member(Admn)

Dated : 7 July, 2000  
Dictated in Open Court

sk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

COPY TO:-

1. HDHND
2. HARN (ADMN) MEMBER
3. HOSJP (JUDL) MEMBER
4. D.R. (ADMN)
5. SPARE
6. ADV. CATE
7. STANDING COUNSEL

1ST AND 2ND COURT

TYPED BY CHECKED BY  
COMPARED BY APPROVED BY

THE HON'BLE MR. JUSTICE DR. NASIR  
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN  
MEMBER (ADMN)

THE HON'BLE MR. BS. JAI PARAMESHWAR  
MEMBER (JUDL)

DATE OF ORDER - 21/2/2000

MA/AM/CP.NG  
IN  
DA.N. 519/99

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPENSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

